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SEP 24 2012

HAROLD BAER, JR.
U.S. DISTRICT JUDGE
S.D.N.Y.

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September 21, 2012

VIA FACSIMILE AND FEDEX

Honorable Harold Baer, Jr.
United States District Judge
United States Courthouse
500 Pearl Street
Room 2230
New York, NY 10007

USDS SDNY
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336,915-002

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Re: **United States v. Carollo, et al., S1 10 Cr. 654 (HB)**

Dear Judge Baer:

We write on behalf of the defendants in the above-referenced case to address a scheduling issue raised by the Court's September 21, 2012 Order regarding the presentencing briefing schedule.

Under Rule 32(g) of the Federal Rules of Criminal Procedure, the final Pre-sentence Reports ("PSRs"), which will contain the sentencing recommendations and the bases for them, must be submitted to the Court no later than seven days before sentencing. Here, that means that the PSRs must be filed no later than October 4, 2012. As required by Rule 32(f)(1), Mr. Grimm submitted his objections and corrections to his draft PSR on September 20; Mr. Goldberg submitted his on September 21; and Mr. Carollo's are due on September 26.

The Court's current schedule requires defendants to submit presentence memoranda on October 1, before receiving the final PSRs. The government is currently permitted to file its sentencing papers after the final PSRs have been issued, and after defendant's papers are due, allowing the government not only to take the sentencing recommendations into account but also to respond to our papers.

We do not want to adjourn the sentencing date, but this schedule would unfairly prejudice defendants by requiring that we submit our briefs without the benefit of the final sentencing recommendations and without seeing the government's arguments. We respectfully ask, therefore, that the Court order that the final PSRs, including the sentencing recommendations and the rationale for each, be submitted no later than October 1 (rather than October 4); the

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government's papers be submitted by October 3; and the defendants' responses be submitted by October 5, leaving the current sentencing date of October 11, 2012, as is.

In the alternative, if Probation cannot complete the final PSRs by October 1, we believe it would be necessary to adjourn the sentencing slightly to allow the defense sufficient time to respond to the PSRs and the government's briefs, and allow the Court sufficient time to review the parties' submissions. We respectfully propose the following schedule:

- Final PSRs due October 4, 2012;
- Government's papers due October 6, 2012;
- Defendants' papers due October 10, 2012; and
- Sentencing October 15, 2012.

We are happy to provide additional information at the Court's request, and thank the Court for its consideration.

Respectfully submitted,



Mark Racanelli
O'Melveny & Myers LLP

cc: Counsel of Record (via e-mail)

Final PSRs due Oct. 4

Defendants' papers due Oct. 10

Government's papers due Oct. 15

Sentencing Oct. 18

Defendants should be aware that if any of their clients are incarcerated, they will likely be remanded.

SO ORDERED:



Harold Baer, Jr., U.S.D.J.

Date: 9/24/12

Endorsement:

Final PSRs due October 4. Defendants' papers due October 10. Governments papers due October 15. Sentencing October 18. Defendants should be aware that if any of their clients are incarcerated, they will likely be remanded.